standard (filing or pursuing litigation that is groundless or for bad faith/improper purpose) adopted today are very high standards, and prevailing defendants are rarely able to meet them. They are designed for only the most egregious cases.

Also, in deciding cases under this standard, courts have considered the party's ability to pay. This is important because Congress does not intend to impose a harsh financial penalty on parents who are merely trying to help their child get needed services and supports. So in applying this standard and deciding whether to grant defendants fees, the court must also consider the ability of the parents to pay.

A school district would be foolhardy to try to use these provisions in any but the most egregious cases. Not only would the school be wasting its own resources if it did not prevail, but it would be liable for the parents' fees defending the action.

Unlike parents who are entitled to attorney fees if they win the case, the fact that a LEA ultimately prevailed is not grounds for assessing fees against a parent or parent's attorney. As the Supreme Court concluded in Christiansburg, courts should not engage in ''post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation. This kind of hindsight logic could discourage all but the most airtight claims, for seldom can a prospective plaintiff be sure of ultimate success.''

As GAO found, there has been a low incidence of litigation under IDEA. The cases that are filed are generally pursued because parents have no other choice. Congress does not intend to discourage these parents from enforcing their child's right to a free, appropriate, public education. This is merely to address the most egregious type of behavior in very rare circumstances where it might arise.

In this reauthorization, we also include a 2-year statute of limitations on claims. However, it should be noted that this limitation is not designed to have any impact on the ability of a child to receive compensatory damages for the entire period in which he or she has been deprived of services. The statute of limitations goes only to the filing of the complaint, not the crafting of remedy. This is important because it is only fair that if a school district repeatedly failed to provide services to a child, they should be required to provide compensatory services to rectify this problem and help the child achieve despite the school's failings.

Therefore, compensatory education must cover the entire period and must belatedly provide all education and related services previously denied and needed to make the child whole. Children whose parents can't afford to pay for special education and related services when school districts fail to provide FAPE should be treated the same as children whose parents can. Children whose parents have the funds can be fully reimbursed under the Supreme Courts decisions in Burlington and Florence County, subject to certain equitable considerations, and children whose parents lack the funds should not be treated differently.

I also want to discuss the monitoring and enforcement sections of this bill. I want to thank Senator KENNEDY for his leadership on this issue. Again, GAO has issued a report that has informed our deliberations around this issue. They noted that the Department of Education found violations of IDEA in 30 of the 31 States monitored. In addition, GAO found that the majority of these violations were for failure to provide actual services to children. That report, issued this year, is titled, ''Special Education: Improved Timeliness and Better Use of Enforcement Actions Could Strengthen Education's Monitoring System.''

When we passed the Americans with Disabilities Act, we said that our four national goals for people with disabilities were equality of opportunity, full participation, independent living, and economic self-sufficiency. But children with disabilities are never going to meet any of those goals if they don't get the tools they need when they are young. So if we truly want equal opportunity for individuals with disabilities, it has to start with IDEA, and with our youth, who are our future. The law must be enforced so they receive the services and supports they need to get a quality education and a brighter future.

As part of the enforcement of this law, States must ensure that local education agencies are meeting their targets to provide a free, appropriate public education. If they fail to do so, the State must take action, including prohibiting the flexible use of any of the local education agency's resources.

In addition to monitoring and enforcement, there are other improvements in this bill. I will mention one area that is near and dear to my heart because of my brother Frank, who, as many of you know, was deaf. In this bill, we add interpreter services to the list of related services, a change that is long overdue and we continue to require the Department of Education to fund captioning so deaf and hard-of-hearing individuals will have equal access to the media.

While I support the bill, I must point out, however, that I am deeply disappointed that this bill does not include mandatory full funding of IDEA. We fought for this on the floor of the Senate. Even though a majority of the Senate agreed, we did not have the needed 60 votes, and it did not become part of the Senate bill. I continue to believe that mandatory funding is required to give schools the resources they need to ensure that all children get a quality education.

This bill does, however, have specific authorized levels that will get us to full funding in 7 years. If we fail to meet these levels, I will continue to argue that Congress should provide mandatory funding to ensure we meet the commitment we made almost 30 years ago.

This is a bill about children. We all tell our children to keep their promises, to fulfill any commitments they make. Yet Congress has not kept its word to these children and their families. We have not provided the resources we said we would. We must fully fund IDEA. This is important to children, to schools, and to our communities. And it is the right thing to do.

I want to thank the staff who worked so hard on this bill. On my staff, I would like to thank Mary Giliberti, Julie Carter, Erik Fatemi, and Justin Chappell. I especially thank Senator KENNEDY's staff for their dedication to children with disabilities, including Connie Garner, Kent Mitchell, Michael Dannenberg, Roberto Rodriguez, and Jeremy Buzzell.

I would also like to thank Denzel McGuire, Annie White, Bill Lucia, and Courtney Brown on Senator GREGG's staff for their efforts to ensure a bipartisan process.

Also, thanks go to Sally Lovejoy and David Cleary with Congressman BOEHNER; Alex Nock with Congressman MILLER; Michael Yudin with Senator BINGAMAN; Carmel Martin, formerly with Senator BINGAMAN's staff; Jamie Fasteau, with Senator MURRAY's; Bethany Little, formerly with Senator MURRAY's staff; Catherine Brown, with Senator CLINTON; Justin King with Senator JEFFORDS; Rebecca Litt, with Senator MIKULSKI; Elyse Wasch, with Senator REED; Maryellen McGuire and Jim Fenton with Senator DODD; Joan Huffer, with Senator DASCHLE; Bethany Dickerson with the Democratic Policy Committee; and Erica Buehrens, with Senator EDWARDS.

Mr. President, IDEA is fundamentally a civil rights statute for children with disabilities. I have worked with my colleagues on this conference to ensure that core rights are protected and enforced.●

NAMING OF JAMES R. BROWNING FEDERAL COURTHOUSE

● Mr. BAUCUS. Mr. President, I would like to speak briefly about legislation to rename the U.S. Courthouse in San Francisco after Judge James R. Browning. This legislation cleared Congress over the weekend. It is a long overdue honor for one of the Nation's finest public servants.

I would like to thank my Senate friends and colleagues for their hard work and support, particularly Senator BOXER, who sponsored the Browning courthouse naming legislation. I would also like to recognize and thank Senator HATCH and Senator STEVENS. Their efforts were crucial in moving this legislation across the finish line in the 109th Congress.

Let me tell you about Judge James R. Browning. First, he is a great man

and a fine judge who has committed the better part of his life to promoting and improving the administration of justice. Montana is proud to call him one of their own, and I am proud to call him my friend.

Judge Browning was born in Great Falls, MT, just like another famous Montana son—former Senate Majority Leader and Ambassador to Japan, Mike Mansfield. Judge Browning grew up in the small town of Belt, MT, and married his high-school sweetheart Marie Rose from Belfry, MT. Judge Browning received his law degree from the University of Montana in 1941, graduating at the top of his class. He worked for the Antitrust Division of the Department of Justice before joining the U.S. Army where he served in Military Intelligence for 3 years, attaining the rank of first lieutenant and winning the Bronze Star.

After the war, he returned to the Justice Department, eventually rising through the ranks to become Executive Assistant to the Attorney General. In 1953, he entered private practice, leaving after 5 years to serve as the Clerk of the U.S. Supreme Court at the request of Chief Justice Earl Warren. In that position, he held the Bible during President John F. Kennedy's inauguration.

In 1961, President Kennedy named James Browning to be a Circuit Judge of the U.S. Court of Appeals for the Ninth Circuit. Judge Browning has served on that court with distinction and honor for more than 40 years, longer than any other judge in Ninth Circuit history. He was still working 6 days a week as an active federal judge when he turned 80 in 1998, and he did not take senior status until November of 2000. He has participated in nearly 1000 published appellate decisions.

Judge Browning was named chief judge of the Ninth Circuit in 1976. During his 12-year tenure as the chief judge, the Ninth Circuit expanded from 23 to 28 judges, eliminated its case backlog entirely, and reduced by half the time needed to decide appeals. He worked tirelessly to improve the administration of the courts, dramatically increasing the efficiency and productivity of the Ninth Circuit, all the while emphasizing collegiality and civility among his colleagues on the Ninth Circuit. Judge Browning's leadership and innovation sparked similar administrative reforms throughout the country.

Judge Browning is held in the highest regard by both bench and bar across California, in Montana, and within the Ninth Circuit legal community. His rich and distinguished career spans more than six decades—most of it spent in public service. We have finally recognized his long service to his country and the Ninth Circuit by renaming the U.S. Courthouse in San Francisco in his honor. It is a long way from Belt, MT, but Judge Browning never forgot his roots, and now neither will the Ninth Circuit that he helped to build.●

FAMILY ENTERTAINMENT AND COPYRIGHT ACT OF 2004

● Mr. CORNYN. Mr. President, would the chairman yield for a question?

Mr. HATCH. I would be happy to yield for a question from the distinguished Senator from Texas.

Mr. CORNYN. As the chairman knows, he and I and our other co-sponsors have worked throughout this Congress on the provisions of the Family Entertainment and Copyright Act of 2004 that we have introduced today. I just want to confirm what I believe to be our mutual understanding about the effect of certain provisions of the Family Movie Act. Title II of the Family Entertainment and Copyright Act of 2004 that we introduced today modifies slightly the Family Movie Act provisions of H.R. 4077 as passed by the House of Representatives. That bill created a new exemption in section 110(11) of the Copyright Act for skipping and muting audio and video content in motion pictures during performances that take place in the course of a private viewing in a household from an authorized copy of the motion picture. The House-passed version specifically excluded from the scope of the new copyright exemption computer programs or technologies that make changes, deletions, or additions to commercial advertisements or to network or station promotional announcements that would otherwise be displayed before, during, or after the performance of the motion picture.

My understanding is that this provision reflected a ''belt and suspenders'' approach that was adopted to quiet the concerns of some Members in the House who were concerned that a court might misread the statute to apply to ''ad-skipping'' cases. Some Senators, however, expressed concern that the inclusion of such explicit language could create unwanted inferences as to the ''ad-skipping'' issues at the heart of the recent litigation. Those issues remain unsettled, and it was never the intent of this legislation to resolve or affect those issues. In the meantime, the Copyright Office has confirmed that such a provision is unnecessary to achieve the intent of the bill, which is to avoid application of this new exemption in potential future cases involving ''ad-skipping'' devices; therefore, the Senate amendment we offer removes the unnecessary exclusionary language.

Would the chairman confirm for the Senators present his understanding of the intent and effect, or perhaps stated more appropriately, the lack of any effect, of the Senate amendment on the scope of this bill?

Mr. HATCH. My cosponsor, Senator CORNYN, raises an important point. While we removed the ''ad-skipping'' language from the statute to avoid this unnecessary controversy, you are absolutely correct that this does not in any way change the scope of the bill. The bill protects the ''making imperceptible . . . limited portions of audio or video content of a motion picture . . .'' An advertisement, under the Copyright Act, is itself a ''motion picture,'' and thus a product or service that enables the skipping of an entire advertisement, in any media, would be beyond the scope of the exemption. Moreover, the phrase ''limited portions'' is intended to refer to portions that are both quantitatively and qualitatively insubstantial in relation to the work as a whole. Where any substantial part of a complete work, such as a commercial advertisement, is made imperceptible, the new section 110(11) exemption would not apply.

The limited scope of this exemption does not, however, imply or show that such a product would be infringing. This legislation does not in any way deal with that issue. It means simply that such a product is not immunized from liability by this exemption.

Mr. CORNYN. I thank the chairman. I am pleased that we share a common understanding. If the chairman would yield for one more question about the Family Movie Act?

Mr. HATCH. Certainly.

Mr. CORNYN. This bill also differs from the House-passed version because it adds two ''savings clauses.'' As I understand it, the ''copyright'' savings clause makes clear that there should be no ''spillover effect'' from the passage of this law: that is, nothing shall be construed to have any effect on rights, defenses, or limitations on rights granted under title 17, other than those explicitly provided for in the new section 110(11) exemption. The second, relating to trademark, clarifies that no inference can be drawn that a person or company who fails to qualify for the exemption from trademark infringement found in this provision is therefore liable for trademark infringement. Is that the chairman's understanding as well?

Mr. HATCH. Yes it is. Let me ask that a copy of the section-by-section analysis of the Family Movie Act as amended by the Senate be included in the RECORD. This section-by-section analysis contains a more complete analysis of the bill as proposed today in the Senate, including the limited changes made by the bill Senators LEAHY, CORNYN, BIDEN, and I offer today.

The analysis follows.

SECTION-BY-SECTION ANALYSIS OF THE FAMILY MOVIE ACT OF 2004, AMENDED AND PASSED BY THE SENATE

OVERVIEW

Title II of the Family Entertainment and Copyright Act of 2004 incorporates the House-passed provision of the Family Movie Act of 2004, with limited changes as reflected in this section-by-section analysis. As discussed herein, these changes are not intended to and do not affect the scope, effect or application of the bill.

The purpose of the Family Movie Act is to empower private individuals to use technology to skip and mute material that they find objectionable in movies, without impacting established doctrines of copyright or